COURT NO.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Income Tax Appeal No.130 of 2004

M/s Halliburton Offshoee Services Inc.
as Agent of Mr. P.C. Harnett

..... Appellant

Versus

The Commissioner of Income Tax, Dehradun

..... Respondent

Ms. Krishi Shukla, Advocate for the appellant.
Mr. S.K. Posti, Advocate for the respondents.

Dated: December 6, 2005

Coram: Hon. P.C. Verma, J.
Hon. J.C.S. Rawat, J.

Both the parties are ready to argue the matter today.

2. This appeal has been preferred against the consolidated order dated 31.03.2004 for the assessment year 1994-95, passed by the Income Tax Appellate Tribunal, (Bench 'D' New Delhi).

3. Brief facts of the case-giving rise to this appeal are that the appellant during the year under consideration employed foreign technicians for execution of contracts in India relating to drilling operation at a rig. In view of the contract of employment and work schedule, the normal work schedule of the employees was 28 days on the rig and 28 days off the rig outside India. During the 28 days outside India, the employees were required to be available to the Company for one or more of the purposes described in the work schedule. On the basis of this stipulation,

the contention of the assessee was that the assessee's employees did not earn any income in India during the 28 days off period and as such the salary received outside India during off period was excluded from the income subject to tax in India under Section 9(1)(ii) and explanation there under. The Assessing Authority has held that the off period salary would be taxable in India and the same was in the nature of leave salary. On appeal, the Commissioner of Income Tax (Appeals), Dehradun affirmed the order of the Assessing Authority. In the second appeal, the Income tax Appellate Tribunal partly allowed the appeal.

4. The learned counsel for the parties agree that only the following question of law arises in the appeal for the determination and they do not press the rest of the questions framed in the appeal:-

> **Whether the Tribunal was right in holding that off-period salary was not taxable under Section 9(1)(ii) read with the Explanation as it stood at the relevant time?**

5. This question was answered by the Division Bench of this Court in the favour of the Revenue Department in the case of Commissioner of Income Tax and another Vs. Sedco Forex International Drilling Co. Ltd. reported in (2003) 264 ITR 320. The Special Leave Petition was filed against the judgment by the Sedco Forex International Drilling Co. Ltd., which was converted into Civil Appeal Nos.351-355 of 2005. The Hon'ble Apex Court in "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another, JT 2005(9) SC 639"** has held that since the Explanation to Section 9(1)(ii) of the Income Tax Act, 1961 was amended by the Finance Act 1999 and was prospective, therefore, it could not be made applicable in the previous years i.e. to say that no retrospective

effect can be given to the Explanation, if the assessment proceedings are pending after the said amendment and accordingly the judgment of Division Bench of this Court was set aside as the assessment year in dispute was prior to 1999.

6. In the present case also, the assessment year is prior to 1999, thus the assessee cannot be taxed in view of the law laid down by the Hon'ble Apex Court "**Sedco Forex International Drill Inc. and Others Vs. Commissioner of Income Tax, Dehradun and Another (Supra).**

7. Accordingly, the appeal is allowed. The question is answered accordingly. No order as to costs.

(J.C.S. Rawat, J.) **(P.C. Verma, J.)**

Rajeev Dang